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400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY, NY 11530

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| EXAMINER |
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BERGIN, JAMES S

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| ART UNIT | PAPER NUMBER |
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3641

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07/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,306

Applicant(s)

BAR ET AL.

Examiner

James S. Bergin

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: in line 9, and most likely due to a typographical error, "then" should likely be replaced with than.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, In lines 8-12, the limitation, "*a textile screen which has an outside periphery smaller in circumference than the radius of the textile screen upon being deployed into an obtuse-angled frusto-conical shape which is pivotably mounted to a holding ring with the smaller base of said frusto-conical shape facing forwardly in the direction of the projectile flight*" is not understood.

The circumference of the outside periphery of the textile screen is not "*smaller than the radius of the textile screen*" when it is deployed into a obtuse-angled frusto-conical shape (see the applicants' Fig. 1 that shows the circumference of the textile screen to be much larger than the radius of the textile screen. The limitation, "*the*

smaller base" of the frusto-conical shape lacks a proper antecedent basis, the bases of the frusto-conical shape not being previously defined in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by clearly anticipated by Bar et al. (US 6,672,536 B2). The following rejection is made is as much as the claims can be understood in the light of the 112 2nd paragraph rejection as discussed above.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Bar et al. clearly disclose the invention substantially as claimed (see abstract, the single Fig. and col. 1, line 65 – col. 2, line 15; col. 3, line 24 – col. 4, line 31), artillery projectile 12; braking elements/ **braking cloth** 16; stowage space 14; ring 15; hood 22; mass accumulation portion 29; col. 3, lines 39-52, " *As illustrated, the*

braking elements 16 can involve segmented flaps which are pivotably mounted to pivot shafts 30 which in turn are fixed to the ring 15 along secants; or the braking elements 16 involve textile members which are folded into the stowage space 14 and which are provided with additional weights in their outer regions and which are in the form of a plurality of strips or a closed cloth which is in the form of a circular ring, such members being pivoted directly to the ring 15 by being sewn therearound. That annular cloth is preferably reinforced by radially extending sewn-on portions, wherein the mass accumulations are sewn in position between the outer ends of the sewn-on portions, which are disposed opposite to the pivotal mountings to the ring 15, along the outer periphery of the braking cloth." During its deployment, the annular braking cloth is inherently deployed substantially into an obtuse-angled frusto-conical shape at least for some moment during the opening/ deploying process, such as while the brake pivots outwardly.

6. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Bar et al. (US 6,511,016 B2). The following rejection is made inasmuch as the claims can be understood in the light of the 112 2nd paragraph rejection as discussed above.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome

either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Bar et al. clearly disclose the invention substantially as claimed (see abstract, Figs. 2-5 and at least col. 5, lines 34-54; "For the reasons already referred to in the opening part of this specification, it is inevitable that the braking device comprising the extended, **relatively narrow individual sectors 24** of the annular disc, forms gaps in a spoke-like configuration. In order to close the openings 32 formed by those gaps (FIG. 3) in order to enhance the braking action, it is possible to provide between each two mutually adjacent sectors 24 a flexible bridging portion 33 which is stretched out in the course of extension of the sectors 24, as shown at the left in FIG. 3. That bridging portion 33 between the sectors forming the annular braking disc can comprise for example **textile fabric** which, in the inwardly folded condition of the sectors 24, is folded in radially under them. The sectors 24 can then even be thinned down to the form of narrow radial spokes, the suspension of which on short pins 25 gives rise to fewer structural problems than the flap suspension of the wider sectors 24, and which in the extended condition afford a stiffening effect, which is structurally defined in an umbrella-like manner, for the braking device which is then generally of a textile nature in the form of an annular disc.

Figs. 3-5 depict the textile natured gapless brake 24, 33 unfolded in an obtuse-angled frusto-conical shape.

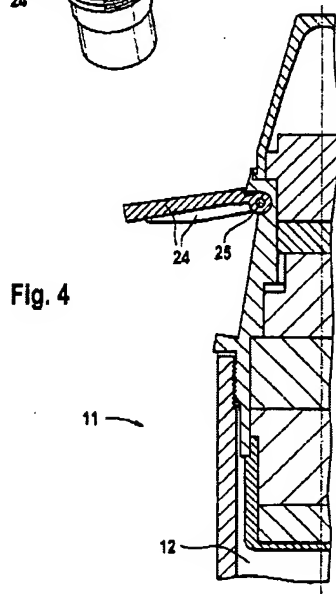
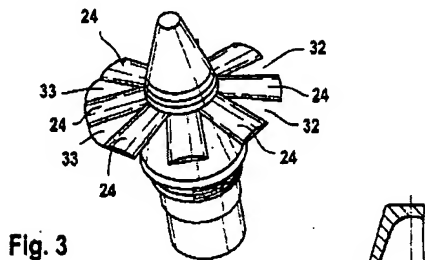
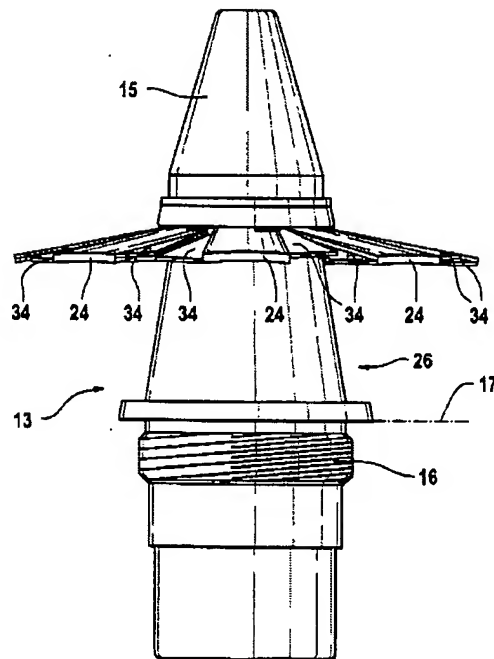


Fig. 5



Response to Arguments

7. Applicant's arguments filed 5/7/2007 have been fully considered but they are not persuasive. The examiner contends that the Bar '016 does in fact disclose a gapless peripherally extending braking screen as illustrated in Figs. 3-5, which depict the textile natured gapless brake 24, 33 unfolded in an obtuse-angled frusto-conical shape.

It is noted that the applicants' claims do not claim that the flexible textile screen 1 "is deployable only into an obtuse-angled frusto-conical shape, although this may be somewhat flat in approaching but not reaching 180 degrees" (see paragraph 1, page 9 of applicants' arguments). The applicants' Claim 1 does not limit the textile screen to

Art Unit: 3641

maintaining the frusto-conical shape permanently while in the deployed condition.

There is nothing in the '016 disclosure that proves that the brake 24, 33 is flat or assumes an operative position perpendicular or normal to the longitudinal axis of the projectile rather than as shown in Figs. 3-5 above.

Regarding the Bar '536 patent, although Bar '536 discloses that the brake 16 pivots into an orientation which is *substantially radial* with respect to the longitudinal 17 of the projectile during its deployment, the annular braking cloth 16 is inherently deployed substantially into an obtuse-angled frusto-conical shape at least for some moment during the opening/ deploying process, such as while the brake pivots outwardly. And the description, *substantially radial* with respect to the longitudinal 17 of the projectile during its deployment does not necessarily mean flat and does not preclude a slightly frusto-conical almost flat shape in a deployed position. It is noted the applicants' brake as seen in Fig. 1 is deployed into a somewhat frusto-conical shape, although it appears to be somewhat flat in approaching but not reaching 180 degrees.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 3641

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Bergin whose telephone number is 571-272-6872. The examiner can normally be reached on Monday - Wednesday and Friday, 8.30 - 5.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

Application/Control Number: 10/527,306

Page 9

Art Unit: 3641

Customer Service Representative or access to the automated information system, call
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James S. Bergin

Primary Examiner, AU 3641

/James Bergin/